Supreme Court, U. S.
FILED
DEC 14 1976
MICHAEL RODAK, JR., CLERK

No. 76-560

In the Supreme Court of the United States

OCTOBER TERM, 1976

SPITZER AKRON, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.

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The petition for a writ of certiorari in this case was filed out of time. The judgment of the court of appeals in this civil matter was entered on June 22, 1976 (App., *infra*). The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases expired on September 20, 1976. The petition was filed on September 22, 1976.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 418. Accordingly, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.

DECEMBER 1976.

APPENDIX

No. 75-2012

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SPITZER AKRON, INC., PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

ORDER

Before: PHILLIPS, Chief Judge, and McCREE and LIVELY, Circuit Judges.

On petition to review an order of the National Labor Relations Board,

This cause came on to be heard on the record of proceedings before the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board be and it is hereby enforced.

It is further ordered that Respondent recover from Petitioner the costs on appeal as itemized below.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN

Clerk

ISSUED AS MANDATE: July 30, 1976

COSTS: To be recovered by Respondent

PRINTING. $238.78

Filed: June 22, 1976
Order
JOHN P. HEHMAN, *Clerk*

DOJ-1976-12